

OLC RECORD COPY

elec. Survey

Office of Legislative Counsel

OLC 77-5571/a
8 JAN 1978

Honorable Edward P. Boland, Chairman
Permanent Select Committee on Intelligence
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

In the absence of Admiral Turner, I am responding to your letters of 15 and 19 December, inviting the Director to testify before the Subcommittee on Legislation regarding proposed legislation to govern electronic surveillance for foreign intelligence purposes.

As to the 10 January 1978 session at 9:00 a.m., the Director would like to appear personally, however, there are some conflicts with respect to Admiral Turner's schedule, which we have mentioned to the Committee's Staff Director, Tom Latimer. Hopefully, these conflicts can be worked out in such a way that will permit the Director to appear. Regarding the 18 January 1978 session, the Director has designated his General Counsel, Anthony Lapham, to testify.

We appreciate the opportunity to testify in this most important area and we will be in touch with the Committee's Chief Counsel, Mike O'Neil, to work out the details.

Sincerely,

SIGNED

George L. Cary
Legislative Counsel

Distribution

- Orig - adse
- 1 - DCI
- 1 - Acting DDCI
- 1 - ER
- 1 - OLC Subject
- 1 - OLC Chrono

OLC:GLC:nl (3 January 1978)

EXECUTIVE SECRETARIAT

Routing Slip

TO:

		ACTION	INFO	DATE	INITIAL
1	DCI		✓		
2	DDCI		✓		
3	D/DCI/IC				
4	DDS&T				
5	DDI				
6	DDA				
7	DDO				
8	D/DCI/NI				
9	GC		✓		
10	LC	✓			
11	IG				
12	Compt				
13	D/Pers				
14	D/S				
15	DTR				
16	A/DCI/PA				
17	AO/DCI				
18	C/IPS				
19	DCI/SS				
20					
21					
22					
SUSPENSE					

Remarks: To 10:

you have the 15 Dec letter for action.

Executive Secretary

31 Dec

Date

STAT

EDWARD P. BOLAND, MASS., CHAIRMAN

CLEMENT J. ZABLOCKI, ILL.
BILL D. BURLISON, MO.
MORGAN F. MURPHY, ILL.
LES ASPIN, WIS.
CHARLES ROSE, N.C.
ROMANO L. MAZZOLI, KY.
NORMAN Y. MINETA, CALIF.
WYCHE FOWLER, JR., GA.

BOB WILSON, CALIF.
JOHN M. ASHBROOK, OHIO
ROBERT MCCLORY, ILL.
J. KENNETH ROBINSON, VA.

THOMAS K. LATIMER, STAFF DIRECTOR
MICHAEL J. O'NEIL, CHIEF COUNSEL

Room H-405, U.S. Capitol
(202) 225-4121

Approved For Release 2004/12/02 : CIA-RDP81M00980R000100060076-2

U.S. HOUSE OF REPRESENTATIVES

PERMANENT SELECT COMMITTEE ON INTELLIGENCE

WASHINGTON, D.C. 20515

December 19, 1977

Executive Registry

77-10670/1

OLC #77-5571/V

Honorable Stansfield Turner
Director of Central Intelligence
Washington, D. C. 20505

Dear Admiral Turner:

With reference to my letter of December 15 inviting you to testify before the Subcommittee on Legislation concerning various foreign intelligence electronic surveillance bills, I also wish to ask you or your designee to return for another session before the Subcommittee on January 18.

This particular session will be the fourth day of hearings the Subcommittee will hold. The previous three will all have been public hearings but it is the expectation of the chairman of the Subcommittee, Mr. Murphy, that the January 18 hearing will be held in executive session, in order to discuss the full ramifications of these bills in the context of the actual and projected practice of the executive branch agencies entrusted with the task of electronic surveillance for foreign intelligence purposes.

I am encouraging everyone who is participating in these hearings to prepare written statements to present to the Committee. If at all possible, these statements should be sent to the Committee three days before the hearing in order that we may duplicate them for distribution to Committee members. I would suggest that you might wish to make a summary of the prepared statement at the time of the hearing so as to leave as much time as possible for questions. As on the January 10 session, the hearings will begin at 9:00 a.m. and continue through the morning. Also, the testimony of all witnesses is given under oath.

If you have any questions, please contact the Committee's Chief Counsel, Mike O'Neil, at 225-4121, or the Subcommittee staff person, Bill Funk, at 225-7997.

With every good wish, I am,

Sincerely yours,


EDWARD P. BOLAND
Chairman

Approved For Release 2004/12/02 : CIA-RDP81M00980R000100060076-2

UNCLASSIFIED	CONFIDENTIAL	SECRET
--------------	--------------	--------

EXECUTIVE SECRETARIAT

Routing Slip

TO:		ACTION	INFO	DATE	INITIAL
1	DCI		✓	w/o abstract	
2	DDCI		✓	"	"
3	D/DCI/IC				
4	DDS&T				
5	DDI				
6	DDA				
7	DDO				
8	D/DCI/NI				
9	GC		✓	"	"
10	LC	✓			
11	IG				
12	Compt				
13	D/Pers				
14	D/S				
15	DTR				
16	A/DCI/PA				
17	AO/DCI				
18	C/IPS				
19	DCI/SS				
20					
21					
22					

SUSPENSE

Date

Remarks:

3637 (5-77)

Date

STAT
25X1

STAFF DIRECTOR, HOUSE, CHAIRMAN

CLEMENT J. ZABLOCKI, WIS.
BILL D. BURLISON, MO.
MORGAN F. MURPHY, ILL.
LES ASPIN, WIS.
CHARLES ROSE, N.C.
ROMANO L. MAZZOLI, KY.
NORMAN Y. MINETA, CALIF.
WYCHE FOWLER, JR., GA.

BOB WILSON, CALIF.
JOHN M. ASHBROOK, OHIO
ROBERT MCCLORY, ILL.
J. KENNETH ROBINSON, VA.

THOMAS K. LATIMER, STAFF DIRECTOR
MICHAEL J. O'NEIL, CHIEF COUNSEL

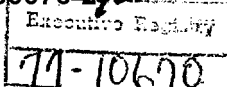
ROOM 21-403, U.S. CAPITOL
(202) 225-4121

Approved For Release 2004/12/02 : CIA-RDP81M00980R000100060076-2

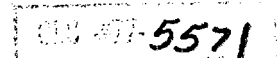
U.S. HOUSE OF REPRESENTATIVES

PERMANENT SELECT COMMITTEE ON INTELLIGENCE

WASHINGTON, D.C. 20515



December 15, 1977



Honorable Stansfield Turner
Director of Central Intelligence
Washington, D. C. 20505

Dear Admiral Turner:

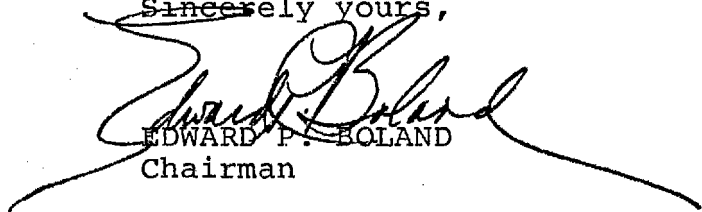
On behalf of the House Permanent Select Committee on Intelligence, I would like to invite you to participate in a public hearing of the Subcommittee on Legislation on Tuesday, January 10, 1978, starting at 9:00 a.m. and continuing through the morning. The subject of the hearing will be proposed legislation to govern electronic surveillance for foreign intelligence purposes. Attached are four bills the Subcommittee has before it.

A prepared written statement for the record may be presented at the hearing and it should be received by the Committee at least three days in advance of the hearing date. I would suggest that you might wish to make a summary of the prepared statement at the time of the hearing so as to leave as much time as possible for questions. Also, the testimony of all witnesses is given under oath.

If you have any questions, please contact the Committee's Chief Counsel, Mike O'Neil, at 225-4121, or the Subcommittee staff person, Bill Funk, at 225-7997.

With every good wish, I am,

Sincerely yours,


EDWARD P. BOLAND
Chairman

Enclosures

95TH CONGRESS
1ST SESSION

H. R. 7308

IN THE HOUSE OF REPRESENTATIVES

MAY 18, 1977

Mr. RODINO introduced the following bill; which was referred to the Committee on the Judiciary

NOVEMBER 4, 1977

Rereferred jointly to the Committee on the Judiciary and the Select Committee on Intelligence

A BILL

To amend title 18, United States Code, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Foreign Intelligence Sur-
4 veillance Act of 1977".

5 SEC. 2. Title 18, United States Code, is amended by
6 adding a new chapter after chapter 119 as follows:

I—O

1 **"Chapter 120.—ELECTRONIC SURVEILLANCE WITH-**
2 **IN THE UNITED STATES FOR FOREIGN INTEL-**
3 **LIGENCE PURPOSES**

"Sec.

"2521. Definitions.

"2522. Authorization for electronic surveillance for foreign intelligence purposes.

"2523. Designation of judges authorized to grant orders for electronic surveillance.

"2524. Application for an order.

"2525. Issuance of an order.

"2526. Use of information.

"2527. Report of electronic surveillance.

4 **"§ 2521. Definitions**

5 **"(a) Except as otherwise provided in this section the**
6 **definitions of section 2510 of this title shall apply to this**
7 **chapter.**

8 **"(b) As used in this chapter—**

9 **"(1) 'Foreign power' means—**

10 **"(A) a foreign government or any component**
11 **thereof, whether or not recognized by the United**
12 **States;**

13 **"(B) a faction of a foreign nation or nations,**
14 **not substantially composed of United States persons;**

15 **"(C) an entity, which is openly acknowledged**
16 **by a foreign government or governments to be**
17 **directed and controlled by such foreign government**
18 **or governments;**

19 **"(D) a foreign-based terrorist group;**

20 **"(E) a foreign-based political organization,**

1 not substantially composed of United States persons;

2 or

3 “(F) an entity which is directed and con-
4 trolled by a foreign government or governments.

5 “(2) ‘Agent of a foreign power’ means—

6 “(A) any person, other than a United States
7 citizen or an alien lawfully admitted for permanent
8 residence (as defined in section 101 (a) (20) of the
9 Immigration and Nationality Act), who—

10 “(i) is an officer or employee of a foreign
11 power;

12 “(ii) knowingly engages in clandestine
13 intelligence activities for or on behalf of a for-
14 eign power under circumstances which indi-
15 cate that such activities would be harmful to
16 the security of the United States; or

17 “(iii) conspires with or knowingly aids or
18 abets a person described in paragraph (ii)
19 above;

20 “(B) any person who—

21 “(i) knowingly engages in clandestine in-
22 telligence activities for or on behalf of a foreign
23 power, which activities involve or will involve
24 a violation of the criminal statutes of the United
25 States;

1 “(ii) knowingly engages in activities that
2 involve or will involve sabotage or terrorism
3 for or on behalf of a foreign power;

4 “(iii) pursuant to the direction of an in-
5 telligence service or intelligence network of a
6 foreign power, knowingly collects or transmits
7 information or material to an intelligence serv-
8 ice or intelligence network of a foreign power
9 in a manner intended to conceal the nature of
10 such information or material or the fact of such
11 transmission or collection, under circumstances
12 which indicate the transmission of such infor-
13 mation or material would be harmful to the
14 security of the United States, or that lack of
15 knowledge by the United States of such collec-
16 tion or transmission would be harmful to the
17 security of the United States; or

18 “(iv) conspires with or knowingly aids or
19 abets any person engaged in activities described
20 in subsections B (i) through (iii) above.

21 “(3) ‘Terrorism’ means activities which—

22 “(A) are violent acts or acts dangerous to
23 human life which would be criminal under the laws
24 of the United States or of any State if committed
25 within its jurisdiction; and

5

1 “(B) appear to be intended—

2 “(i) to intimidate or coerce the civilian
3 population,

4 “(ii) to influence the policy of a govern-
5 ment by intimidation or coercion, or

6 “(iii) to affect the conduct of a govern-
7 ment by assassination or kidnapping.

8 “(4) ‘Sabotage’ means activities which would be
9 prohibited by title 18, United States Code, chapter 105,
10 if committed against the United States.

11 “(5) ‘Foreign intelligence information’ means—

12 “(A) information which relates to, and is
13 deemed necessary to the ability of the United States
14 to protect itself against, actual or potential attack or
15 other grave hostile acts of a foreign power or an
16 agent of a foreign power;

17 “(B) information with respect to a foreign
18 power or foreign territory, which relates to, and
19 because of its importance is deemed essential to—

20 “(i) the national defense or the security
21 of the Nation; or

22 “(ii) the successful conduct of the foreign
23 affairs of the United States;

24 “(C) information which relates to, and is
25 deemed necessary to the ability of the United States

1 to protect against terrorism by a foreign power or
2 an agent of a foreign power;

3 “(D) information which relates to, and is
4 deemed necessary to the ability of the United States
5 to protect against sabotage by a foreign power or
6 an agent of a foreign power;

7 “(E) information which relates to, and is
8 deemed necessary to the ability of the United States
9 to protect against the clandestine intelligence activ-
10 ities of an intelligence service or network of a foreign
11 power or an agent of a foreign power.

12 “(6) ‘Electronic surveillance’ means—

13 “(A) the acquisition by an electronic, mechan-
14 ical, or other surveillance device of the contents of
15 any wire or radio communication sent by or in-
16 tended to be received by a particular, known United
17 States person who is in the United States, where
18 the contents are acquired by intentionally target-
19 ing that United States person, under circumstances
20 in which a person has a reasonable expectation of
21 privacy and a warrant would be required for law
22 enforcement purposes;

23 “(B) the acquisition by an electronic, mechan-
24 ical, or other surveillance device, of the contents of
25 any wire communication to or from a person in the

1 United States, without the consent of any party
2 thereto, where such acquisition occurs in the United
3 States while the communication is being transmitted
4 by wire;

5 “(C) the intentional acquisition, by an elec-
6 tronic, mechanical, or other surveillance device, of
7 the contents of any radio communication, under
8 circumstances in which a person has a reasonable
9 expectation of privacy and a warrant would be
10 required for law enforcement purposes, and where
11 both the sender and all intended recipients are
12 located within the United States; or

13 “(D) the installation or use of an electronic,
14 mechanical, or other surveillance device in the
15 United States for monitoring to acquire informa-
16 tion, other than from a wire or radio communication,
17 under circumstances in which a person has a reason-
18 able expectation of privacy and a warrant would be
19 required for law enforcement purposes.

20 “(7) ‘Attorney General’ means the Attorney Gen-
21 eral of the United States (or Acting Attorney General
22 or an Assistant Attorney General specially designated
23 in writing by the Attorney General.

24 “(8) ‘Minimization procedures’ means procedures
25 which are reasonably designed to minimize the acquisi-

1 tion, retention, and dissemination of any information
2 concerning United States persons without their consent
3 that does not relate to the ability of the United States—

4 “(A) to protect itself against actual or poten-
5 tial attack or other grave hostile acts of a foreign
6 power or an agent of a foreign power;

7 “(B) to provide for the national defense or
8 security of the Nation;

9 “(C) to provide for the conduct of the foreign
10 affairs of the United States;

11 “(D) to protect against terrorism by a foreign
12 power or an agent of a foreign power;

13 “(E) to protect against sabotage by a foreign
14 power or an agent of a foreign power; or

15 “(F) to protect against the clandestine intelli-
16 gence activities of an intelligence service or net-
17 work of a foreign power or an agent of a foreign
18 power;

19 and which are reasonably designed to insure that in-
20 formation which relates solely to the conduct of foreign
21 affairs shall not be maintained in such a manner as to
22 permit the retrieval of such information by reference to a
23 United States person, without his consent, who was a
24 party to a communication acquired pursuant to this

1 chapter; and if the target of the electronic surveillance
2 is a foreign power which qualifies as such solely on the
3 basis that it is an entity controlled and directed by a
4 foreign government or governments, and unless there is
5 probable cause to believe that a substantial number of
6 the officers or executives of such entity are officers or
7 employees of a foreign government, or agents of a
8 foreign power as defined in section 2521 (b) (2) (B),
9 procedures which are reasonably designed to prevent the
10 acquisition, retention, and dissemination of communica-
11 tions of unconsenting United States persons who are not
12 officers or executives of such entity responsible for those
13 areas of its activities which involve foreign intelligence
14 information.

15 “(9) ‘United States person’ means a citizen of the
16 United States, an alien lawfully admitted for permanent
17 residence (as defined in section 101 (a) (20) of the
18 Immigration and Nationality Act), an unincorporated
19 association a substantial number of members of which
20 are citizens of the United States or aliens lawfully ad-
21 mitted for permanent residence or a corporation which
22 is incorporated in the United States, but not including
23 corporations which are foreign powers.

24 “(10) ‘United States’ when used in a geographic

1 sense means all areas under the territorial sovereignty of
2 the United States, the Trust Territory of the Pacific
3 Islands, and the Canal Zone.

4 **“§ 2522. Authorization for electronic surveillance for for-**
5 **eign intelligence purposes**

6 “Applications for a court order under this chapter are
7 authorizing electronic surveillance under this chapter, such
8 powered the Attorney General to approve applications to
9 Federal judges having jurisdiction under section 2523 of this
10 chapter, and a judge to whom an application is made may
11 grant an order, in conformity with section 2525 of this
12 chapter, approving electronic surveillance of a foreign power
13 or an agent of a foreign power for the purpose of obtaining
14 foreign intelligence information.

15 **“§ 2523. Designation of judges authorized to grant orders**
16 **for electronic surveillance**

17 “(a) The Chief Justice of the United States shall public-
18 ly designate seven district court judges, each of whom shall
19 have jurisdiction to hear applications for and grant orders
20 approving electronic surveillance anywhere within the
21 United States under the procedures set forth in this chapter,
22 except that no judge designated under this subsection shall
23 have jurisdiction of the same application for electronic sur-
24 veillance under this chapter which has been denied pre-

1 viously by another judge designated under this subsection.
2 If any judge so designated denies an application for an order
3 authorizing electronic surveillance under this chapter, such
4 judge shall provide immediately for the record a written
5 statement of each reason for his decision and, on motion of
6 the United States, the record shall be transmitted, under
7 seal, to the special court of review established in subsection
8 (b).

9 “(b) The Chief Justice shall publicly designate three
10 judges, one of whom shall be publicly designated as the
11 presiding judge, from the United States district courts or
12 courts of appeals who together shall comprise a special
13 court of review which shall have jurisdiction to review the
14 denial of any application made under this chapter. If such
15 special court determines that the application was properly
16 denied, the special court shall immediately provide for the
17 record a written statement of each reason for its decision
18 and, on petition of the United States for a writ of certiorari,
19 the record shall be transmitted under seal to the Supreme
20 Court, which shall have jurisdiction to review such decision.

21 “(c) Proceedings under this chapter shall be con-
22 ducted as expeditiously as possible. The record of proceed-
23 ings under this chapter, including applications made and
24 orders granted, shall be sealed and maintained under secu-

1 rity measures established by the Chief Justice in consulta-
2 tion with the Attorney General and the Director of Central
3 Intelligence.

4 **“§ 2524. Application for an order**

5 “(a) Each application for an order approving elec-
6 tronic surveillance under this chapter shall be made by a
7 Federal officer in writing upon oath or affirmation to a judge
8 having jurisdiction under section 2523 of this chapter. Each
9 application shall require the approval of the Attorney Gen-
10 eral based upon his finding that it satisfies the criteria and
11 requirements of such application as set forth in this chapter.
12 It shall include the following information:

13 “(1) the identity of the Federal officer making
14 the application;

15 “(2) the authority conferred on the Attorney
16 General by the President of the United States and the
17 approval of the Attorney General to make the
18 application;

19 “(3) the identity or a description of the target of
20 the electronic surveillance;

21 “(4) a statement of the facts and circumstances
22 relied upon by the applicant to justify his belief that—

23 “(A) the target of the electronic surveillance
24 is a foreign power or an agent of a foreign power;
25 and

1 “(B) the facilities or the place at which the
2 electronic surveillance is directed are being used, or are
3 about to be used, by a foreign power or an agent of a
4 foreign power.

5 “(5) a statement of the proposed minimization pro-
6 cedures;

7 “(6) when the target of the surveillance is not a
8 foreign power as defined in section 2521 (b) (1)
9 (A), (B), or (C), a detailed description of the nature
10 of the information sought;

11 “(7) a certification or certifications by the Assist-
12 ant to the President for National Security Affairs or an
13 executive branch official or officials designated by the
14 President from among those executive officers employed
15 in the area of national security or defense and appointed
16 by the President with the advice and consent of the
17 Senate—

18 “(A) that the information sought is foreign
19 intelligence information;

20 “(B) that the purpose of the surveillance is to
21 obtain foreign intelligence information;

22 “(C) that such information cannot reasonably
23 be obtained by normal investigative techniques;

24 “(D) including a designation of the type of
25 foreign intelligence information being sought ac-

1 cording to the categories described in section 2521
2 (b) (5) ;

3 “(E) when the target of the surveillance is
4 not a foreign power, as defined in section 2521 (b)
5 (1) (A), (B), or (C), including a statement of
6 the basis for the certification that—

7 “(i) the information sought is the type of
8 foreign intelligence information designated; and

9 “(ii) such information cannot reasonably
10 be obtained by normal investigative techniques;

11 “(F) when the target of the surveillance is a
12 foreign power, as defined in section 2521 (b) (1)
13 (A), (B), or (C), stating the period of time for
14 which the surveillance is required to be maintained;

15 “(8) when the target of the surveillance is not a
16 foreign power, as defined in section 2521 (b) (1) (A),
17 (B), or (C), a statement of the means by which the
18 surveillance will be effected, and when the target is
19 a foreign power, as defined in section 2521 (b) (1)
20 (A), (B), or (C), a designation of the type of elec-
21 tronic surveillance to be used according to the categories
22 described in section 2521 (b) (6) ;

23 “(9) a statement of the facts concerning all pre-
24 vious applications that have been made to any judge
25 under this chapter involving any of the persons, facilities,

1 or places specified in the application, and the action
2 taken on each previous application; and

3 “(10) when the target of the surveillance is not
4 a foreign power, as defined in section 2521 (b) (1)
5 (A), (B), or (C), a statement of the period of time
6 for which the electronic surveillance is required to be
7 maintained.

8 If the nature of the intelligence gathering is such that the
9 approval of the use of electronic surveillance under this
10 chapter should not automatically terminate when the de-
11 scribed type of information has first been obtained, a descrip-
12 tion of facts supporting the belief that additional information
13 of the same type will be obtained thereafter.

14 “(b) The Attorney General may require any other
15 affidavit or certification from any other officer in connection
16 with the application.

17 “(c) The judge may require the applicant to furnish
18 such other information as may be necessary to make the
19 determinations required by section 2525 of this chapter.

20 **“§ 2525. Issuance of an order**

21 “(a) Upon an application made pursuant to section
22 2524 of this title, the judge shall enter an ex parte order as
23 requested or as modified approving the electronic surveil-
24 lance if he finds that—

25 “(1) the President has authorized the Attorney

1 General to approve applications for electronic surveil-
2 lance for foreign intelligence information;

3 “(2) the application has been made by a Federal
4 officer and approved by the Attorney General;

5 “(3) on the basis of the facts submitted by the
6 applicant there is probable cause to believe that—

7 “(A) the target of the electronic surveillance is
8 a foreign power or an agent of a foreign power; and

9 “(B) the facilities or place at which the elec-
10 tronic surveillance is directed are being used, or
11 are about to be used, by a foreign power or an agent
12 of a foreign power;

13 “(4) the proposed minimization procedures meet
14 the definition of minimization procedures under section
15 2521 (b) (8) of this title;

16 “(5) the application which has been filed contains
17 the description and certification or certifications, speci-
18 fied in section 2524 (a) (7) and, if the target is a United
19 States person, the certification or certifications are not
20 clearly erroneous on the basis of the statement made
21 under section 2524 (a) (7) (E).

22 “(b) An order approving an electronic surveillance
23 under this section shall—

24 “(1) specify—

1 “(A) the identity or a description of the target
2 of the electronic surveillance;

3 “(B) the nature and location of the facilities or
4 the place at which the electronic surveillance will be
5 directed;

6 “(C) the type of information sought to be
7 acquired;

8 “(D) when the target of the surveillance is not
9 a foreign power, as defined in section 2521 (b) (1)
10 (A), (B), or (C), the means by which the elec-
11 tronic surveillance will be effected, and when the
12 target is a foreign power, as defined in section 2521
13 (b) (1) (A), (B), or (C), a designation of the
14 type of electronic surveillance to be used according
15 to the categories described in section 2521 (b) (6) ;
16 and

17 “(E) the period of time during which the elec-
18 tronic surveillance is approved; and

19 “(2) direct—

20 “(A) that the minimization procedures be
21 followed;

22 “(B) that, upon the request of the applicant, a
23 specified communication or other common carrier,
24 landlord, custodian, contractor, or other specified

1 person furnish the applicant forthwith any and all
2 information, facilities, or technical assistance, neces-
3 sary to accomplish the electronic surveillance in
4 such manner as will protect its secrecy and produce
5 a minimum of interference with the services that
6 such carrier, landlord, custodian, contractor, or
7 other person is providing that target of electronic
8 surveillance;

9 “(C) that such carrier, landlord, custodian, or
10 other person maintain under security procedures
11 approved by the Attorney General and the Director
12 of Central Intelligence any records concerning the
13 surveillance or the aid furnished which such person
14 wishes to retain;

15 “(D) that the applicant compensate, at the
16 prevailing rate, such carrier, landlord, custodian, or
17 other person for furnishing such aid.

18 “(c) An order issued under this section may approve
19 an electronic surveillance not targeted against a foreign
20 power, as defined in section 2521 (b) (1) (A), (B), or
21 (C), for the period necessary to achieve its purpose, or for
22 ninety days, whichever is less; an order under this section
23 shall approve an electronic surveillance targeted against a
24 foreign power, as defined in section 2521 (b) (1) (A), (B),
25 or (C) for the period specified in the certification required

1 in section 2524 (a) (7) (F), or for one year, whichever is
2 less. Extensions of an order issued under this chapter may
3 be granted on the same basis as an original order upon an
4 application for an extension made in the same manner as
5 required for an original application and after new findings
6 required by subsection (a) of this section. In connection
7 with applications for extensions where the target is not a
8 foreign power, as defined in section 2521 (b) (1) (A),
9 (B), or (C), the judge may require the applicant to submit
10 information, obtained pursuant to the original order or to
11 any previous extensions, as may be necessary to make new
12 findings of probable cause.

13 “(d) Notwithstanding any other provision of this chap-
14 ter when the Attorney General reasonably determines that—

15 “(1) an emergency situation exists with respect to
16 the employment of electronic surveillance to obtain for-
17 eign intelligence information before an order authorizing
18 such surveillance can with due diligence be obtained, and

19 “(2) the factual basis for issuance of an order
20 under this chapter to approve such surveillance exists,
21 he may authorize the emergency employment of electronic
22 surveillance if a judge designated pursuant to section 2523
23 of this chapter is informed by the Attorney General or his
24 designate at the time of such authorization that the decision
25 has been made to employ emergency electronic surveillance

1 and if an application in accordance with this chapter is
2 made to that judge as soon as practicable, but not more than
3 twenty-four hours after the Attorney General authorizes
4 such acquisition. If the Attorney General authorizes such
5 emergency employment of electronic surveillance, he shall
6 require that the minimization procedures required by this
7 chapter for the issuance of a judicial order be followed. In
8 the absence of a judicial order approving such electronic
9 surveillance, the surveillance shall terminate when the infor-
10 mation sought is obtained, when the application for the
11 order is denied, or after the expiration of twenty-four hours
12 from the time of authorization by the Attorney General,
13 whichever is earliest. In the event that such application for
14 approval is denied, or in any other case where the electronic
15 surveillance is terminated without an order having been
16 issued, no information obtained or evidence derived from
17 such surveillance shall be received in evidence or otherwise
18 disclosed in any trial, hearing or other proceeding in or
19 before any court, grand jury, department, office, agency,
20 regulatory body, legislative committee or other authority
21 of the United States, a State or political subdivision thereof.
22 A denial of the application made under this subsection may
23 be reviewed as provided in section 2523.

24 **“§ 2526. Use of information**

25 “(a) Information concerning United States persons

1 acquired from an electronic surveillance conducted pursuant
2 to this chapter may be used and disclosed by Federal officers
3 and employees without the consent of the United States
4 person only for purposes specified in section 2521 (b) (8)
5 (A) through (F), or for the enforcement of the criminal
6 law if its use outweighs the possible harm to the national
7 security. No otherwise privileged communication obtained
8 in accordance with, or in violation of, the provisions of this
9 chapter shall lose its privileged character.

10 “(b) The minimization procedures required under this
11 chapter shall not preclude the retention and disclosure, for
12 law enforcement purposes, of any information which con-
13 stitutes evidence of a crime if such disclosure is accompanied
14 by a statement that such evidence, or any information
15 derived therefrom, may only be used in a criminal proceed-
16 ing with the advance authorization of the Attorney General.

17 “(c) Whenever the Government intends to enter into
18 evidence or otherwise use or disclose in any trial, hearing,
19 or other proceeding in or before any court, department, officer,
20 agency, or other authority of the United States, any informa-
21 tion obtained or derived from an electronic surveillance, the
22 Government shall prior to the trial, hearing, or other proceed-
23 ing or at a reasonable time prior to an effort to so disclose
24 or so use the information or submit it in evidence notify the
25 court in which the information is to be disclosed or used or,

1 if the information is to be disclosed or used in or before
2 another authority, shall notify a court in the district wherein
3 the information is to be so disclosed or so used that the Gov-
4 ernment intends to so disclose or so use such information.
5 Whenever any court is so notified, or whenever a motion is
6 made pursuant to section 3504 of this title, or any other
7 statute or rule of the United States to suppress evidence on
8 the grounds that it was obtained or derived from an unlawful
9 electronic surveillance, the court, or where the motion is
10 made before another authority, a court in the same district
11 as the authority, shall notwithstanding any other law, if the
12 Government by affidavit asserts that an adversary hearing
13 would harm the national security or the foreign affairs of the
14 United States, review in camera and ex parte the applica-
15 tion, order, and so much of the transcript of the surveillance
16 as may be necessary to determine whether the surveillance
17 was authorized and conducted in a manner that did not vio-
18 late any right afforded by the Constitution and statutes of
19 the United States to the person aggrieved: *Provided, That,*
20 in making this determination, the court shall disclose to the
21 aggrieved person portions of the application, order, or tran-
22 script only where such disclosure is necessary for an accurate
23 determination of the legality of the surveillance. If the court
24 determines that the electronic surveillance of the person ag-
25 grieved was not lawfully authorized or conducted, the court

1 shall in accordance with the requirements of law suppress
2 that information which was obtained or evidence derived un-
3 lawfully from the electronic surveillance of the person
4 aggrieved.

5 “(d) If an emergency employment of the electronic
6 surveillance is authorized under section 2525 (d) and a sub-
7 sequent order approving the surveillance is not obtained,
8 the judge shall cause to be served on any United States per-
9 son named in the application and on such other United States
10 persons subject to electronic surveillance as the judge may
11 determine in his discretion it is in the interest of justice to
12 serve, notice of—

13 “(1) the fact of the application;

14 “(2) the period of the surveillance; and

15 “(3) the fact that during the period information
16 was or was not obtained.

17 On an ex parte showing of good cause to the judge the serv-
18 ing of the notice required by this subsection may be post-
19 poned or suspended for a period not to exceed ninety days.
20 Thereafter, on a further ex parte showing of good cause, the
21 court shall forego ordering the serving of the notice required
22 under this subsection.

23 **“§ 2527. Report of electronic surveillance**

24 “In April of each year, the Attorney General shall re-
25 port to the Administrative Office of the United States Courts

1 and shall transmit to Congress with respect to the preceding
2 calendar year—

3 “(1) the total number of applications made for
4 orders and extensions of orders approving electronic
5 surveillance; and

6 “(2) the total number of such orders and extensions
7 either granted, modified, or denied.”.

8 SEC. 3. The provisions of this Act and the amendment
9 made hereby shall become effective upon enactment: *Pro-*
10 *vided*, That, any electronic surveillance approved by the
11 Attorney General to gather foreign intelligence information
12 shall not be deemed unlawful for failure to follow the proce-
13 dures of chapter 120, title 18, United States Code, if that
14 surveillance is terminated or an order approving that sur-
15 veillance is obtained under this chapter within ninety days
16 following the designation of the first judge pursuant to section
17 2523 of chapter 120, title 18, United States Code.

18 SEC. 4. Chapter 119 of title 18, United States Code, is
19 amended as follows:

20 (a) Section 2511(1) is amended—

21 (1) by inserting “or chapter 120 or with respect
22 to techniques used by law enforcement officers not
23 involving the interception of wire or oral communica-
24 tions as otherwise authorized by a search warrant or

1 order of a court of competent jurisdiction," immediately
2 after "chapter" in the first sentence;

3 (2) by inserting a comma and "or, under color of
4 law, willfully engages in any other form of electronic
5 surveillance as defined in chapter 120" immediately
6 before the semicolon in paragraph (a) ;

7 (3) by inserting "or information obtained under
8 color of law by any other form of electronic surveillance
9 as defined in chapter 120" immediately after "contents
10 of any wire or oral communication" in paragraph (c) ;

11 (4) by inserting "or any other form of electronic
12 surveillance, as defined in chapter 120," immediately
13 before "in violation" in paragraph (c) ;

14 (5) by inserting "or information obtained under
15 color of law by any other form of electronic surveillance
16 as defined in chapter 120" immediately after "any wire
17 or oral communication" in paragraph (d) ; and

18 (6) by inserting "or any other form of electronic
19 surveillance, as defined in chapter 120," immediately
20 before "in violation" in paragraph (d) .

21 (b) (1) Section 2511 (2) (a) (i) is amended by insert-
22 ing the words "or radio communication" after the words
23 "wire communication" and by inserting the words "or other-
24 wise acquire" after the word "intercept",

1 (2) Section 2511 (2) (a) (ii) is amended by inserting
2 the words "or chapter 120" after the second appearance of
3 the word "chapter", and by striking the period at the end
4 thereof and adding the following: "or engage in electronic
5 surveillance, as defined in chapter 120: *Provided, however,*
6 That before the information, facilities, or technical assistance
7 may be provided, the investigative or law enforcement
8 officer shall furnish to the officer, employee, or agent of the
9 carrier either—

10 “(1) an order signed by the authorizing judge
11 certifying that a court order directing such assistance
12 has been issued; or

13 “(2) in the case of an emergency interception or
14 electronic surveillance as provided for in section 2518
15 (7) of this chapter or section 2525 (d) of chapter 120,
16 a certification under oath by investigative or law en-
17 forcement officer that the applicable statutory require-
18 ments have been met,

19 and setting forth the period of time for which the electronic
20 surveillance is authorized and describing the facilities from
21 which the communication is to be acquired. Any violation
22 of this subsection by a communication common carrier or
23 an officer, employee, or agency thereof, shall render the
24 carrier liable for the civil damages provided for in section
25 2520.”.

1 (c) (1) Section 2511 (2) (b) is amended by inserting
2 the words "or otherwise engage in electronic surveillance,
3 as defined in chapter 120," after the word "radio".

4 (2) Section 2511 (2) (c) is amended by inserting the
5 words "or engage in electronic surveillance, as defined in
6 chapter 120," after the words "oral communication" and
7 by inserting the words "or such surveillance" after the last
8 word in the paragraph and before the period.

9 (3) Section 2511 (2) is amended by adding at the
10 end of the section the following provisions:

11 “(e) Notwithstanding any other provision of this title
12 or sections 605 or 606 of the Communications Act of 1934,
13 it shall not be unlawful for an officer, employee, or agent
14 of the United States in the normal course of his official duty
15 to conduct electronic surveillance as defined in section 2521
16 (b) (6) of chapter 120 without a court order for the sole
17 purpose of—

18 “(i) testing the capability of electronic equipment,
19 provided that the test period shall be limited in extent
20 and duration to that necessary to determine the capabil-
21 ity of the equipment, that the content of any communi-
22 cation acquired under this paragraph shall be retained
23 and used only for the purpose of determining the capa-
24 bility of such equipment, shall be disclosed only to the
25 persons conducting the test, and shall be destroyed upon

1 completion of the testing, and that the test may exceed
2 ninety days only with the prior approval of the Attor-
3 ney General; or

4 (ii) determining the existence and capability of
5 electronic surveillance equipment being used unlawfully:

6 *Provided*, That such electronic surveillance shall be lim-
7 ited in extent and duration to that necessary to determine
8 the existence and capability of such equipment, and that
9 any information acquired by such surveillance shall be
10 used only to enforce this chapter or section 605 of the
11 Communications Act of 1934 or to protect information
12 from unlawful electronic surveillance.

13 “(f) Nothing contained in this chapter, or section 605
14 of the Communications Act of 1934 (47 U.S.C. 605) shall
15 be deemed to affect the acquisition by the United States
16 Government of foreign intelligence information from inter-
17 national communications by a means other than electronic
18 surveillance as defined in section 2521 (b) (6) of this title;
19 and the procedures in this chapter and chapter 120 of this
20 title, shall be the exclusive means by which electronic surveil-
21 lance, as defined in section 2521 (b) (6) of chapter 120, and
22 the interception of domestic wire and oral communications
23 may be conducted.”.

24 (d) Section 2511 (3) is repealed.

1 (e) Section 2515 is amended by inserting the words "or
2 electronic surveillance, as defined in chapter 120, has been
3 conducted" after the word "intercepted", by inserting the
4 words "or other information obtained from electronic surveil-
5 lance, as defined in chapter 120," after the second appearance
6 of the word "communication", and by inserting "or chapter
7 120" after the final appearance of the word "chapter".

8 (f) Section 2518 (1) is amended by inserting the words
9 "under this chapter" after the word "communication".

10 (g) Section 2518 (4) is amended by inserting the words
11 "under this chapter" after both appearances of the words
12 "wire or oral communication".

13 (h) Section 2518 (9) is amended by striking the word
14 "intercepted" and inserting the words "intercepted pursuant
15 tion has been intercepted, or about whom information has

16 (i) Section 2519 (3) is amended by inserting the words
17 "pursuant to this chapter" after the words "wire or oral
18 communications" and after the words "granted or denied".

19 (j) Section 2520 is amended by deleting all before sub-
20 section (2) and inserting in lieu thereof: "Any person other
21 than a foreign power or an agent of a foreign power as
22 defined in sections 2521 (b) (1) and 2521 (b) (2) (A) of
23 chapter 120, who has been subject to electronic surveillance,
24 as defined in chapter 120, or whose wire or oral communica-

1 tion has been intercepted, or about whom information has
2 been disclosed or used, in violation of this chapter, shall (1)
3 have a civil cause of action against any person who so acted
4 in violation of this chapter and”.

95TH CONGRESS
1ST SESSION

H. R. 7308

A BILL

To amend title 18, United States Code, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information.

By Mr. RODINO

MAY 18, 1977

Referred to the Committee on the Judiciary

NOVEMBER 4, 1977

Rereferred jointly to the Committee on the Judiciary
and the Select Committee on Intelligence

95TH CONGRESS
1ST SESSION

H. R. 9745

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 25, 1977

Mr. McCLORY introduced the following bill; which was referred jointly to the
Committees on the Judiciary and Select Committee on Intelligence

A BILL

To amend title 18, United States Code, to provide a mechanism
for the authorization of electronic surveillance to obtain
foreign intelligence information.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Foreign Intelligence
4 Surveillance Act of 1977".

5 SEC. 2. Title 18, United States Code, is amended by
6 adding a new chapter after chapter 119 as follows:

I

1 **"Chapter 120.—ELECTRONIC SURVEILLANCE TO**
2 **OBTAIN FOREIGN INTELLIGENCE INFORMATION**

"Sec.

"2521. Definitions.

"2522. Authorization of electronic surveillance to obtain foreign intelligence information.

"2523. Use of information.

"2524. Report of electronic surveillance.

"2525. Geographic applicability of chapter.

"2526. Retention of records.

3 **"§ 2521. Definitions**

4 " (a) Except as otherwise provided in this section the
5 definitions of section 2510 of this title shall apply in this
6 chapter.

7 " (b) As used in this chapter the following definitions
8 shall apply:

9 " (1) The term 'foreign power' means—

10 " (A) a foreign government or any component
11 thereof, whether or not recognized by the United
12 States;

13 " (B) a faction of a foreign nation or nations,
14 not substantially composed of United States persons;

15 " (C) a group, which is openly acknowledged
16 by a foreign government or governments to be
17 directed and controlled by such foreign government
18 or governments;

19 " (D) a foreign-based terrorist group; or

20 " (E) a foreign-based political organization,
21 not substantially composed of United States persons.

1 “(2) The term ‘agent of a foreign power’ means—

2 “(A) any person who—

3 “(i) is an officer or employee of a foreign
4 power;

5 “(ii) knowingly engages in clandestine
6 intelligence activities for or on behalf of a for-
7 eign power under circumstances which indicate
8 that such activities would be harmful to the
9 security of the United States;

10 “(iii) knowingly engages in activities that
11 involve or will involve sabotage or terrorism for
12 or on behalf of a foreign power; or

13 “(iv) conspires with or knowingly aids or
14 abets any person engaged in activities described
15 in clauses (i) through (iii) of this subpara-
16 graph.

17 “(3) The term ‘terrorism’ means activities which—

18 “(A) are violent acts or acts dangerous to
19 human life which would be criminal under the
20 laws of the United States or of any State if com-
21 mitted within its jurisdiction; and

22 “(B) appear to be intended—

23 “(i) to intimidate or coerce the civilian
24 population,

1 “(ii) to influence the policy of a govern-
2 ment by intimidation or coercion, or

3 “(iii) to affect the conduct of a govern-
4 ment by assassination or kidnaping.

5 “(4) The term ‘sabotage’ means activities which
6 would be prohibited by title 18, United States Code,
7 chapter 105, if committed against the United States.

8 “(5) The term ‘foreign intelligence information’
9 means—

10 “(A) information which relates to, and is
11 deemed necessary to the ability of the United States
12 to protect itself against, actual or potential attack or
13 other grave hostile acts of a foreign power or an
14 agent of a foreign power.

15 “(B) information with respect to a foreign
16 power or foreign territory, which relates to, and
17 because of its importance is deemed essential to—

18 “(i) the national defense or the security
19 of the Nation; or

20 “(ii) the successful conduct of the foreign
21 affairs of the United States.

22 “(C) information which relates to, and is
23 deemed necessary to the ability of the United States
24 to protect against terrorism by a foreign power or
25 an agent of a foreign power;

1 “(D) information which relates to, and is
2 deemed necessary to the ability of the United States
3 to protect against sabotage by a foreign power or
4 an agent of a foreign power;

5 “(E) information which relates to, and is
6 deemed necessary to the ability of the United States
7 to protect against the clandestine intelligence activ-
8 ities of an intelligence service or network of a foreign
9 power or an agent of a foreign power.

10 “(6) The term ‘electronic surveillance’ means—

11 “(A) the acquisition by an electronic, mechan-
12 ical, or other surveillance device, of the contents of
13 any wire or radio communication, sent from and
14 intended to be received in the United States, with-
15 out the consent of any party thereto, under circum-
16 stances in which a person has a reasonable expecta-
17 tion of privacy, while the communication is being
18 transmitted or received;

19 “(B) the acquisition by an electronic, mechan-
20 ical, or other surveillance device, of the contents of
21 any wire or radio communication sent from or in-
22 tended to be received in the United States, without
23 the consent of any party thereto, under circum-
24 stances in which a person has a reasonable expecta-

1 tion of privacy, while the communication is being
2 transmitted or received;

3 “(C) the acquisition by an electronic, mechan-
4 cal, or other surveillance device, of the contents of
5 any wire or radio communication, neither sent from
6 nor intended to be received in the United States,
7 without the consent of any party thereto, under cir-
8 cumstances in which a person has a reasonable ex-
9 pectation of privacy, while the communication is
10 being transmitted or received; or

11 “(D) the installation or use of an electronic,
12 mechanical, or other surveillance device for monitor-
13 ing to acquire information, other than from a wire
14 or radio communication, without the consent of any
15 party thereto, under circumstances in which a person
16 has a reasonable expectation of privacy.

17 “(7) The term ‘minimization procedures’ means
18 procedures which are reasonably designed to minimize
19 the acquisition, retention, and dissemination of any in-
20 formation concerning United States persons without their
21 consent that does not relate to the ability of the United
22 States—

23 “(A) to protect itself against actual or poten-
24 tial attack or other grave hostile acts of a foreign
25 power or an agent of a foreign power;

1 “(B) to provide for the national defense or
2 security of the Nation;

3 “(C) to provide for the conduct of the foreign
4 affairs of the United States;

5 “(D) to protect against terrorism by a foreign
6 power or an agent of a foreign power;

7 “(E) to protect against sabotage by a foreign
8 power or an agent of a foreign power; or

9 “(F) to protect against the clandestine intelli-
10 gence activities of an intelligence service or net-
11 work of a foreign power or an agent of a foreign
12 power;

13 and which are reasonably designed to insure that in-
14 formation which relates solely to the conduct of foreign
15 affairs shall not be maintained in such a manner as to
16 permit the retrieval of such information by reference to a
17 United States person, without his consent, who was a
18 party to a communication acquired pursuant to this
19 chapter; and if the target of the electronic surveillance
20 is a foreign power which qualifies as such solely on the
21 basis that it is an entity controlled and directed by a
22 foreign government or governments, and unless there is
23 probable cause to believe that a substantial number of
24 the officers or executives of such entity are agents of any
25 foreign power, procedures which are reasonably de-

1 signed to prevent the acquisition, retention, and dissem-
2 ination of communications of unconsenting United States
3 persons who are not officers or executives of such entity
4 with responsibility for those areas of its activities which
5 involve foreign intelligence information.

6 “(8) The term ‘United States person’ means a
7 citizen of the United States, an alien lawfully admitted
8 for permanent residence (as defined in section 101 (a)
9 (20) of the Immigration and Nationality Act), an
10 unincorporated association a substantial number of mem-
11 bers of which are citizens of the United States or aliens
12 lawfully admitted for permanent residence or a corpo-
13 ration which is incorporated in the United States, but
14 not including corporations which are foreign powers.

15 “(9) The term ‘United States’ when used in a geo-
16 graphic sense means all areas under the territorial sov-
17 ereignty of the United States, the Trust Territory of the
18 Pacific Islands, and the Canal Zone.

19 “(10) The term ‘surveillance certificate’ means a
20 document which includes the following:

21 “(A) a Statement identifying or describing the
22 target of the electronic surveillance, including a
23 statement that the target is or is not a United States
24 person.

25 “(B) A statement of the facts and circum-

1 stances relied upon by the President to justify the
2 belief that—

3 “(i) the target of the electronic surveil-
4 lance is or is not a United States person;

5 “(ii) the target of the electronic surveil-
6 lance is a foreign power or an agent of a foreign
7 power; and

8 “(iii) the facilities or the place at which
9 the electronic surveillance is directed are being
10 used, or are about to be used, by a foreign power
11 or an agent of a foreign power.

12 “(C) A statement of the proposed minimization
13 procedures.

14 “(D) When the target of the surveillance is not
15 a foreign power, a detailed statement of the nature
16 of the information sought.

17 “(E) A statement that the information sought
18 is foreign intelligence information.

19 “(F) A statement that the purpose of the sur-
20 veillance is to obtain foreign intelligence informa-
21 tion.

22 “(G) A statement that such information can-
23 not reasonably be obtained by normal investigative
24 techniques.

1 “(H) A statement designating the type of
2 foreign intelligence information being sought accord-
3 ing to the categories described in section 2521 (b)
4 (5).

5 “(I) When the target of the surveillance is
6 not a foreign power, a statement of the basis for
7 the certification that—

8 “(i) the information sought is the type
9 of foreign intelligence information designated;
10 and

11 “(ii) such information cannot reasonably
12 be obtained by normal investigative techniques.

13 “(J) A statement of the period of time for
14 which the surveillance is required to be maintained.

15 “(K) When the target of the surveillance is
16 not a foreign power, a statement of the means by
17 which the surveillance will be effected, and when
18 the target is a foreign power, a statement desig-
19 nating the type of electronic surveillance to be used
20 according to the categories described in section 2521
21 (b) (6).

22 “(L) If the nature of the intelligence gather-
23 ing is such that the approval of the use of electronic
24 surveillance under this chapter should not automati-

1 cally terminate when the described type of infor-
2 mation has first been obtained, a statement of facts
3 supporting the belief that additional information of
4 the same type will be obtained thereafter.

5 **“§ 2522. Authorization of electronic surveillance to obtain**
6 **foreign intelligence information**

7 “(a) Electronic surveillance to obtain foreign intel-
8 ligence information may be authorized by—

9 “(1) the issuance of a surveillance certificate
10 signed by—

11 “(A) the Attorney General, and

12 “(B) the Assistant to the President for Na-
13 tional Security Affairs or an executive branch of-
14 ficial or officials designated by the President from
15 among those executive officials employed in the
16 area of national security or defense appointed by
17 the President with the advice and consent of the
18 Senate; and

19 “(2) the issuance of a certification signed by the
20 President that such electronic surveillance would be in
21 accordance with this chapter.

22 “(b) Electronic surveillance authorized under this
23 chapter may only be performed according to the terms of a
24 surveillance certificate.

1 “(c) Electronic surveillance may be authorized under
2 this chapter to last for the period necessary to achieve its
3 purpose, or—

4 “(1) for ninety days, whichever is less, if the tar-
5 get of the surveillance is not a foreign power;

6 “(2) for one year, whichever is less, if the target
7 of the surveillance is a foreign power.

8 “(d) Electronic surveillance authorized under this chap-
9 ter may be reauthorized in the same manner as the original
10 authorization, provided that all statements required to be
11 made under section 2521 (b) (10) be based on new findings.

12 “(e) Notwithstanding any other provision of this
13 chapter, when the Attorney General reasonably determines
14 that—

15 “(1) an emergency situation exists with respect to
16 the employment of electronic surveillance to obtain
17 foreign intelligence information before the provisions of
18 subsection (a) of this section may be followed; and

19 “(2) the factual basis exists for the issuance of a
20 surveillance certificate under this chapter to approve
21 such surveillance,

22 he may authorize the emergency employment of electronic
23 surveillance if the President or his designate is informed
24 by the Attorney General at the time of such authorization
25 that the decision has been made to employ emergency elec-

1 tronic surveillance and if the otherwise mandated procedures
2 of this chapter are followed as soon as practicable, but not
3 more than forty-eight hours after the Attorney General
4 authorizes such acquisition. If the Attorney General author-
5 izes such emergency employment of electronic surveil-
6 lance, he shall require that the minimization procedures
7 required by this chapter be followed. If electronic surveil-
8 lance is authorized under this subsection, it shall terminate
9 when the information sought is obtained, or after the
10 expiration of forty-eight hours from the time of authorization
11 by the Attorney General, whichever is earliest. In the event
12 that an ultimate determination is made that the requirements
13 of subsection (a) of this section would not have been met, all
14 information obtained or evidence derived from electronic
15 surveillance authorized under this subsection shall be de-
16 stroyed within forty-eight hours of such determination,
17 though a record of the facts surrounding the Attorney Gen-
18 eral's authorization and the making of such ultimate determi-
19 nation shall be made and preserved with all other records
20 generated under this chapter.

21 **“§ 2523. Use of information**

22 “(a) Information concerning United States persons
23 acquired from an electronic surveillance conducted pursuant
24 to this chapter may be used and disclosed by Federal of-
25 ficers and employees without the consent of the United

1 States person only for purposes specified in section
2 2521 (b) (7) (A) through (F), or for the enforcement
3 of the criminal law if its use outweighs the possible harm
4 to the national security. No otherwise privileged commu-
5 nication obtained in accordance with, or in violation of, the
6 provisions of this chapter shall lose its privileged character.

7 “(b) The minimization procedures required under this
8 chapter shall not preclude the retention and disclosure,
9 for law enforcement purposes, of any information which
10 constitutes evidence of a crime if such disclosure is accom-
11 panied by a statement that such evidence, or any informa-
12 tion derived therefrom, may only be used in a criminal
13 proceeding with the advance authorization of the Attorney
14 General.

15 “(c) Whenever the Government intends to enter into
16 evidence or otherwise use or disclose in any trial, hearing,
17 or other proceeding in or before any court, department,
18 officer, agency, or other authority of the United States, any
19 information obtained or derived from an electronic surveil-
20 lance conducted pursuant to this chapter, the Government
21 shall, prior to the trial, hearing, or other proceeding or at a
22 reasonable time prior to an effort to so disclose or so use the
23 information or submit it in evidence notify the court in
24 which the information is to be disclosed or used or if the
25 information is to be disclosed or used in or before another

1 authority, shall notify a court in the district wherein the
2 information is to be so disclosed or so used that the Govern-
3 ment intends to so disclose or so use such information.
4 Whenever any court is so notified, or whenever a motion is
5 made pursuant to section 3504 of this title, or any other
6 law or rule of the United States to suppress evidence on the
7 grounds that it was obtained or derived from an unlawful
8 electronic surveillance, the court, or where the motion is
9 made before another authority, a court in the same district
10 as the authority, shall, notwithstanding any other law, if the
11 Government by affidavit asserts that an adversary hearing
12 would harm the national security or the foreign affairs of
13 the United States, review in camera and ex parte the docu-
14 ments required by section 2522 (a) and so much of the
15 transcript of the surveillance as may be necessary to deter-
16 mine whether the surveillance was authorized and conducted
17 in a manner that did not violate any right afforded by the
18 Constitution and laws of the United States to the person
19 aggrieved, but, in making this determination, the court shall
20 disclose to the aggrieved person portions of these documents
21 or transcript only where such disclosure is necessary for an
22 accurate determination of the legality of the surveillance. If
23 the court determines that the electronic surveillance of the
24 person aggrieved was not lawfully authorized or conducted,
25 the court shall, in accordance with the requirements of law,

1 suppress that information which was obtained or evidence
2 derived unlawfully from the electronic surveillance of the
3 person aggrieved.

4 **“§ 2524. Report of electronic surveillance**

5 “(a) In April of each year, the Attorney General shall
6 transmit to Congress with respect to the preceding calendar
7 year the total number of authorizations and the total number
8 of reauthorizations made under section 2522.

9 “(b) Nothing in this chapter shall be deemed to limit
10 the authority of the Select Committee on Intelligence of the
11 United States Senate or the Permanent Select Committee on
12 Intelligence of the United States House of Representatives
13 to obtain such information as may be needed to carry out
14 their respective duties.

15 **“§ 2525. Geographic applicability of chapter**

16 “The provisions of this chapter shall apply to all elec-
17 tronic surveillance to obtain foreign intelligence information—

18 “(a) if a target of such surveillance is a United
19 States person; and

20 “(b) when a target is not a United States person, if
21 the communication to be acquired is sent from or in-
22 tended to be received within the United States, and the
23 communication is to be acquired within the United
24 States.

1 **“§ 2526. Retention of records**

2 “All surveillance certificates, all documents used to sup-
3 port the issuance of surveillance certificates, and all other
4 documents and records generated under this chapter shall be
5 retained for a period of at least twenty years and shall be
6 stored at the direction of the Attorney General under con-
7 ditions approved by the Director of Central Intelligence.”.

8 SEC. 3. The provisions of this Act and the amendments
9 made by this Act shall become effective upon the date of
10 enactment of this Act, but any electronic surveillance ap-
11 proved by the Attorney General to gather foreign intelligence
12 information shall not be deemed unlawful for failure to fol-
13 low the procedures of chapter 120 of title 18, United States
14 Code, if that surveillance is terminated or an authorization
15 that surveillance is obtained under this chapter within ninety
16 days following such date of enactment.

17 SEC. 4. Chapter 119 of title 18, United States Code, is
18 amended as follows:

19 (a) Section 2511 (1) is amended—

20 (1) by inserting “or chapter 120 or with respect
21 to techniques used by law enforcement officers not in-
22 volving the interception of wire or oral communications
23 as otherwise authorized by a search warrant or order

1 of a court of competent jurisdiction," immediately after
2 "chapter" in the first sentence;

3 (2) by inserting a comma and "or, under color of
4 law, willfully engages in any other form of electronic
5 surveillance as defined in chapter 120" immediately
6 before the semicolon in paragraph (a) ;

7 (3) by inserting "or information obtained under
8 color of law by any other form of electronic surveillance
9 as defined in chapter 120" immediately after "contents
10 of wire or oral communication" in paragraph (c) ;

11 (4) by inserting "or any other form of electronic
12 surveillance, as defined in chapter 120," immediately
13 before "in violation" in paragraph (c) ;

14 (5) by inserting "or information obtained under
15 color of law by any other form of electronic surveillance
16 as defined in chapter 120" immediately after "any wire
17 or oral communication" in paragraph (d) ; and

18 (6) by inserting "or any other form of electronic
19 surveillance, as defined in chapter 120," immediately
20 before "in violation" in paragraph (d) .

21 (b) (1) Section 2511 (2) (a) (i) is amended by insert-
22 ing "or radio communication" immediately after "wire
23 communication" and by inserting "or otherwise acquire"
24 immediately after "intercept".

1 (2) Section 2511 (2) (a) (ii) is amended by inserting
2 “or chapter 120” immediately after the second appearance
3 of “chapter”, and by striking the period at the end thereof
4 and inserting in lieu of such period the following: “or engage
5 in electronic surveillance, as defined in chapter 120, but
6 before the information, facilities, or technical assistance may
7 be provided, the investigative or law enforcement officer
8 shall furnish to the officer, employee, or agent of the carrier
9 either—

10 “ (1) an order signed by the authorizing judge certi-
11 fying that a court order directing such assistance has been
12 issued pursuant to this chapter;

13 “ (2) a letter signed by the Attorney General stating
14 that the statutory requirements of chapter 120 have been
15 followed; or

16 “ (3) in the case of an emergency interception or
17 electronic surveillance as provided for in section 2518 (7)
18 of this chapter or section 2522 (e) of chapter 120, a cer-
19 tification under oath by investigative or law enforcement
20 officer that the applicable statutory requirements have
21 been met,

22 and setting forth the period of time for which the electronic
23 surveillance is authorized and describing the facilities from
24 which the communication is to be acquired. Any violation of

1 this subsection by a communication common carrier or an
2 officer, employee, or agency thereof shall render the carrier
3 liable for the civil damages provided for in section 2520.”.

4 (c) (1) Section 2511 (2) (b) is amended by inserting
5 “or otherwise engage in electronic surveillance, as defined in
6 chapter 120,” immediately after “radio”.

7 (2) Section 2511 (2) is amended by adding at the end
8 the following:

9 “(e) Notwithstanding any other provision of this title or
10 section 605 or 606 of the Communications Act of 1934, it
11 shall not be unlawful for an officer, employee, or agent of the
12 United States in the normal course of his official duty to
13 conduct electronic surveillance as defined in section 2521 (b)
14 (6) of chapter 120, without a court order issued pursuant to
15 this chapter or an authorization under section 2522 of chap-
16 ter 120, for the sole purpose of determining the existence and
17 capability of electronic surveillance equipment being used
18 unlawfully, but such electronic surveillance shall be limited in
19 extent and duration to that necessary to determine the exist-
20 ence and capability of such equipment, and that any informa-
21 tion acquired by such surveillance shall be used only to en-
22 force this chapter or section 605 of the Communications Act
23 of 1934 or to protect information from unlawful electronic
24 surveillance.

1 “(f) The procedures in this chapter and chapter 120 of
2 this title shall be the exclusive means by which electronic
3 surveillance, as defined in section 2521 (b) (6) of this title,
4 and the interception of domestic wire and oral communica-
5 tions may be conducted.”.

6 (d) Section 2511 (3) is repealed.

7 (e) Section 2515 is amended—

8 (1) by inserting “or electronic surveillance, as
9 defined in chapter 120 of this title, has been conducted”
10 after the word “intercepted”;

11 (2) by inserting “or other information obtained
12 from electronic surveillance, as defined in chapter 120,”
13 immediately after the second appearance of “communi-
14 cation”; and

15 (3) by inserting “or chapter 120 of this title”
16 immediately after the final appearance of “chapter”.

17 (f) Section 2518 (1) is amended by inserting “under
18 this chapter” immediately after “communication”.

19 (g) Section 2518 (4) is amended by inserting “under
20 this chapter” immediately after each appearance of “wire or
21 oral communication”.

22 (h) Section 2518 (9) is amended by striking out “in-
23 tercepted” and inserting “intercepted pursuant to this chap-
24 ter” immediately after “communication”.

1 (i) Section 2519 (3) is amended by inserting “pur-
2 suant to this chapter” immediately after “wire or oral com-
3 munications” and immediately after “granted or denied”.

4 (j) Section 2520 is amended by striking out “Any
5 person” and all that follows through “violation of this chapter
6 shall” and inserting in lieu thereof: “Any person other than
7 a foreign power or an agent of a foreign power as defined in
8 sections 2521 (b) (1) and 2521 (b) (2) (A) of chapter 120,
9 who has been subject to electronic surveillance, as defined in
10 chapter 120, or whose wire or oral communication has been
11 intercepted, or about whom information has been disclosed
12 or used, in violation of this chapter, shall (1) have a civil
13 cause of action against any person who so acted in violation
14 of this chapter and”.

95TH CONGRESS
1ST SESSION

H. R. 9745

A BILL

To amend title 18, United States Code, to provide a mechanism for the authorization of electronic surveillance to obtain foreign intelligence information.

By Mr. McCLORY

OCTOBER 25, 1977

Referred jointly to the Committees on the Judiciary
and Select Committee on Intelligence

95TH CONGRESS
1ST SESSION

H. R. 5632

IN THE HOUSE OF REPRESENTATIVES

MARCH 28, 1977

Mr. KASTENMEIER introduced the following bill; which was referred to the Committee on the Judiciary

NOVEMBER 4, 1977

Rereferred jointly to the Committee on the Judiciary and the Select Committee on Intelligence

A BILL

To amend title 18, chapter 119, United States Code, to provide special procedures in the case of applications for court orders for the interception of oral or wire communications to obtain foreign intelligence information.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Foreign Intelligence
4 Surveillance Amendments of 1977".

5 SEC. 2. Section 2510 of title 18 of the United States
6 Code is amended—

7 (1) by striking out "and" at the end of subsection
8 (10) :

I—O

1 (2) by striking out the period at the end of sub-
2 section (11) and inserting in lieu thereof a semicolon;
3 and

4 (3) by inserting immediately after subsection (11)
5 the following new subsections:

6 “(12) ‘Foreign power’ means—

7 “(A) a foreign government or any component
8 thereof, whether or not recognized by the United
9 States;

10 “(B) a faction of a foreign nation or nations,
11 not substantially composed of permanent resident
12 aliens or citizens of the United States;

13 “(C) an entity, which is directed and con-
14 trolled by a foreign government or governments;

15 “(D) a foreign-based terrorists group; or

16 “(E) a foreign-based political organization,
17 not substantially composed of permanent resident
18 aliens or citizens of the United States.

19 “(13) ‘Agent of a foreign power’ means—

20 “(A) a person who is not a permanent resident
21 alien or citizen of the United States and who is an
22 officer or employee of a foreign power;

23 “(B) a person who—

24 “(i) knowingly engages in, or knowingly

1 acts in furtherance of, terrorist activities for or
2 on behalf of a foreign power, or

3 “(ii) conspires with, aids, or abets such a
4 person knowing that such person is engaged in
5 such activities;

6 “(C) a person who—

7 “(i) knowingly engages in, or knowingly
8 acts in furtherance of, sabotage activities for or
9 on behalf of a foreign power, or

10 “(ii) conspires with, aids, or abets such a
11 person, knowing that such person is engaged in
12 such clandestine intelligence activities; or

13 “(D) a person who, acting pursuant to the
14 direction of an intelligence service or intelligence
15 network which engages in intelligence activities in
16 the United States on behalf of a foreign power,
17 knowingly transmits information or material to such
18 service or network in a manner intended to conceal
19 the nature of such information or material or the fact
20 of such transmission under circumstances which
21 would lead a reasonable person to believe that the
22 information or material will be used to harm the
23 security of the United States, or that lack of knowl-
24 edge by the Government of the United States of

1 such transmission will harm the security of the
2 United States.

3 “(14) ‘Terrorist activities’ means activities which—

4 “(A) are violent acts or acts dangerous to
5 human life which are criminal under the laws of the
6 United States or of any State if committed within
7 its jurisdiction; and

8 “(B) appear to be intended—

9 “(i) to intimidate or coerce the civilian
10 population, or

11 “(ii) to influence the policy of a govern-
12 ment by intimidation or coercion.

13 “(15) ‘Sabotage activities’ means activities prohib-
14 ited by title 18, United States Code, chapter 105.

15 “(16) ‘Foreign intelligence information’ means—

16 “(A) information which relates to, and is neces-
17 sary to the ability of the United States to protect
18 itself against, actual or potential attack or other
19 grave hostile acts of a foreign power or an agent of a
20 foreign power;

21 “(B) information with respect to a foreign
22 power or foreign territory, which relates to, and be-
23 cause of its importance is essential to—

24 “(i) the national defense or the security of
25 the Nation, or

1 “(ii) the conduct of the foreign affairs of
2 the United States;

3 “(C) information which relates to, and is neces-
4 sary to the ability of the United States to protect
5 against, the terrorist activities of a foreign power or
6 an agent of a foreign power;

7 “(D) information which relates to, and is neces-
8 sary to the ability of the United States to protect
9 against, the sabotage activities of a foreign power or
10 an agent of a foreign power; or

11 “(E) information which relates to, and is neces-
12 sary to the ability of the United States to protect
13 itself against the clandestine intelligence activities of
14 an intelligence service or network of a foreign power
15 or an agent of a foreign power.”.

16 SEC. 3. Section 2511 of title 18 of the United States
17 Code is amended by striking out subsection (3) .

18 SEC. 4. Section 2516 (1) of title 18 of the United States
19 Code is amended to read as follows:

20 “(1) The Attorney General, or any Assistant Attorney
21 General specifically designated by the Attorney General,
22 may authorize an application to a Federal judge of com-
23 petent jurisdiction or, in the case of offenses listed in para-
24 graph (a) below to a judge of the United States Court of
25 Appeals for the District of Columbia Circuit, and such judge

1 may grant in conformity with section 2518 of this chapter
2 an order authorizing or approving the interception of wire
3 or oral communication by the Federal Bureau of Investi-
4 gation or a Federal agency having responsibility for the
5 investigation of the offense as to which the application is
6 made, when such interception may provide or has provided
7 evidence of—”.

8 SEC. 5. Section 2516(1) (a) of title 18 of the United
9 States Code is amended by deleting the semicolon at the
10 end thereof and inserting the following: “, or any offense
11 punishable pursuant to section 8 of the Foreign Agents
12 Registration Act of 1938 (title 22, United States Code,
13 section 618) or section 6 of the Export Administration Act
14 of 1969 (title 50 appendix, United States Code, section
15 2405) ;”.

16 SEC. 6. Section 2517(3) of title 18 of the United
17 States Code is amended by deleting the period at the end
18 thereof and inserting in lieu thereof the following: “except
19 where the interception was made pursuant to the provisions
20 of section 2521.”.

21 SEC. 7. Section 2518(5) of title 18 of the United
22 States Code is amended to read as follows:

23 “(5) Except as provided in section 2521 no order
24 entered under this section may authorize or approve the
25 interception of any wire or oral communication for any

1 period longer than is necessary to achieve the objective of
2 the authorization, nor in any event longer than thirty days.
3 Extensions of an order may be granted, but only upon
4 application for an extension made in accordance with sub-
5 section (1) of this section and the court making the find-
6 ings required by subsection (3) of this section. The period
7 of extension shall be no longer than the authorizing judge
8 deems necessary to achieve the purposes for which it was
9 granted and in no event for longer than thirty days. Every
10 order and extension thereof shall contain a provision that
11 the authorization to intercept shall be executed as soon as
12 practicable, shall be conducted in such a way as to minimize
13 the interception of communications not otherwise subject to
14 interception under this chapter, and must terminate upon
15 attainment of the authorized objective, or in any event in
16 thirty days.”.

17 SEC. 8. Section 2518 (8) of title 18 of the United States
18 Code is amended by inserting immediately following “(8)”
19 the following: “Except where waiver of notice is obtained
20 pursuant to section 2521—”.

21 SEC. 9. Title 18 of the United States Code is amended
22 by adding the following new section:

23 **“§ 2521. Interceptions for purposes of foreign intelligence**
24 **information**

1 “Notwithstanding the provisions of subsection 2518 (5),
2 in the case of any application for an order authorizing or ap-
3 proving the interception of an oral or wire communication for
4 the purposes specified in section 2516 (1) (a) in which the
5 application states and the judge finds that there is reason to
6 believe that foreign intelligence information may be obtained
7 by such interception, a judge of the United States Court of
8 Appeals for the District of Columbia Circuit, to whom ap-
9 plication has been made pursuant to section 2516 (1) (a)
10 may issue an ex parte order, as requested or modified, au-
11 thorizing or approving such interception for a period not to
12 exceed ninety days, and with regard to such interception may
13 grant a waiver of the provisions of section 2518 (8) (d).
14 Extensions of such an order may be granted in accordance
15 with sections 2516 (1) and 2518 (1) and (3).”.

95TH CONGRESS
1ST SESSION
H. R. 5632

A BILL

To amend title 18, chapter 119, United States Code, to provide special procedures in the case of applications for court orders for the interception of oral or wire communications to obtain foreign intelligence information.

By **Mr. KASTENMEIER**

MARCH 28, 1977

Referred to the Committee on the Judiciary

NOVEMBER 4, 1977

Rereferred jointly to the Committee on the Judiciary
and the Select Committee on Intelligence

95TH CONGRESS
1ST SESSION

H. R. 5794

IN THE HOUSE OF REPRESENTATIVES

MARCH 30, 1977

Mr. RAILSBACK introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Foreign Intelligence
4 Surveillance Act of 1977".

5 SEC. 2. Title 18, United States Code, is amended by
6 adding a new chapter after chapter 119 as follows:

I

1 **“Chapter 120.—ELECTRONIC SURVEILLANCE WITH-**
2 **IN THE UNITED STATES FOR FOREIGN INTEL-**
3 **LIGENCE PURPOSES**

“Sec.

“2521. Definitions.

“2522. Authorization for electronic surveillance for foreign intelligence purposes.

“2523. Designation of judges authorized to grant orders for electronic surveillance.

“2524. Application for an order.

“2525. Issuance of an order.

“2526. Use of information.

“2527. Report of electronic surveillance.

“2528. Presidential power.”

4 **“§ 2521. Definitions**

5 “(a) Except as otherwise provided in this section the
6 definitions of section 2510 of this title shall apply to this
7 chapter.

8 “(b) As used in this chapter—

9 “(1) ‘Foreign power’ means—

10 “(A) a foreign government or any component
11 thereof, whether or not recognized by the United
12 States;

13 “(B) a faction of a foreign nation or nations,
14 not substantially composed of permanent resident
15 aliens or citizens of the United States;

16 “(C) an entity, which is directed and con-
17 trolled by a foreign government or governments;

18 “(D) a foreign-based terrorist group; or

19 “(E) a foreign-based political organization,

1 not substantially composed of permanent resident
2 aliens or citizens of the United States.

3 “(2) ‘Agent of a foreign power’ means—

4 “(A) a person who is not a permanent resi-
5 dent alien or citizen of the United States and who
6 is an officer or employee of a foreign power;

7 “(B) a person who—

8 “(i) knowingly engages in, or knowingly
9 acts in furtherance of, terrorist activities for
10 or on behalf of a foreign power, or

11 “(ii) conspires with, aids, or abets such a
12 person, knowing that such person is engaged
13 in such activities;

14 “(C) a person who—

15 “(i) knowingly engages in, or knowingly
16 acts in furtherance of, sabotage activities for
17 or on behalf of a foreign power, or

18 “(ii) conspires with, aids, or abets such a
19 person, knowing that such person is engaged
20 in such activities;

21 “(D) a person who—

22 “(i) knowingly engages in clandestine in-
23 telligence activities for or on behalf of a for-
24 eign power, which activities involve or will in-

1 involve a violation of the criminal statutes of
2 the United States; or

3 “(ii) conspires with, aids, or abets such a
4 person, knowing that such person is engaged
5 in such clandestine intelligence activities; or

6 “(E) a person who, acting pursuant to the
7 direction of an intelligence service or intelligence
8 network which engages in intelligence activities
9 in the United States on behalf of a foreign power,
10 knowingly transmits information or material to such
11 service or network in a manner intended to conceal
12 the nature of such information or material or the
13 fact of such transmission under circumstances which
14 would lead a reasonable man to believe that the
15 information or material will be used to harm the
16 security of the United States, or that lack of knowl-
17 edge by the Government of the United States of
18 such transmission will harm the security of the
19 United States.

20 “(3) ‘Terrorist activities’ means activities which—

21 “(A) are violent acts or acts dangerous to
22 human life which are criminal under the laws of
23 the United States or of any State if committed
24 within its jurisdiction; and

25 “(B) appear to be intended—

1 “(i) to intimidate or coerce the civilian
2 population, or

3 “(ii) to influence the policy of a govern-
4 ment by intimidation or coercion.

5 “(4) ‘Sabotage activities’ means activities pro-
6 hibited by title 18, United States Code, chapter 105.

7 “(5) ‘Foreign intelligence information’ means—

8 “(A) information which relates to, and is
9 deemed necessary to the ability of the United States
10 to protect itself against, actual or potential attack
11 or other grave hostile acts of a foreign power or an
12 agent of a foreign power;

13 “(B) information with respect to a foreign
14 power or foreign territory, which relates to, and
15 because of its importance is deemed essential to—

16 “(i) the national defense or the security
17 of the Nation, or

18 “(ii) the conduct of the foreign affairs
19 of the United States;

20 “(C) information which relates to, and is
21 deemed necessary to the ability of the United
22 States to protect against, the terrorist activities of
23 a foreign power or an agent of a foreign power;

24 “(D) information which relates to, and is
25 deemed necessary to the ability of the United

1 States to protect against, the sabotage activities
2 of a foreign power or an agent of a foreign power;
3 or

4 “(E) information which relates to, and is
5 deemed necessary to the ability of the United
6 States to protect itself against, the clandestine in-
7 telligence activities of an intelligence service or net-
8 work of a foreign power or an agent of a foreign
9 power;

10 “(6) ‘Electronic surveillance’ means—

11 “(A) the acquisition, by an electronic, me-
12 chanical, or other surveillance device, of the con-
13 tents of a wire communication to or from a person
14 in the United States, without the consent of any
15 party thereto, where such acquisition occurs in the
16 United States while the communication is being
17 transmitted by wire;

18 “(B) the acquisition, by an electronic, me-
19 chanical, or other surveillance device of the con-
20 tents of a radio communication, without the con-
21 sent of any party thereto, made, under circum-
22 stances where a person has a constitutionally pro-
23 tected right of privacy and where both the sender
24 and all intended recipients are located within the
25 United States; or

1 “(C) the installation or use of an electronic,
2 mechanical, or other surveillance device in the
3 United States to acquire information other than
4 from a wire communication or radio communica-
5 tion under circumstances in which a person has a
6 constitutionally protected right to privacy.

7 “(7) ‘Attorney General’ means the Attorney Gen-
8 eral of the United States or in his absence the Acting
9 Attorney General.

10 “(8) ‘Minimization procedures’ means procedures
11 to minimize the acquisition of information that is not
12 foreign intelligence information, to assure that infor-
13 mation which is not foreign intelligence information not
14 be maintained, and to assure that information obtained
15 not be used except as provided in section 2526.

16 **“§ 2522. Authorization for electronic surveillance for for-**
17 **eign intelligence purposes**

18 “Applications for a court order under this chapter are
19 authorized if the President has, by written authorization,
20 empowered the Attorney General to approve applications to
21 Federal judges having jurisdiction under section 2523 of
22 this chapter, and a judge to whom an applicant is made
23 may grant an order, in conformity with section 2525 of this
24 chapter, approving electronic surveillance of a foreign power

1 or an agent of a foreign power for the purpose of obtaining
2 foreign intelligence information.

3 **“§ 2523. Designation of judges authorized to grant orders**
4 **for electronic surveillance**

5 “(a) The Chief Justice of the United States shall pub-
6 licly designate seven district court judges, each of whom
7 shall have jurisdiction to hear applications for and grant
8 orders approving electronic surveillance anywhere within the
9 United States under the procedures set forth in this chap-
10 ter, except that no judge designated under this subsection
11 shall have jurisdiction of an application for electronic sur-
12 veillance under this chapter which has been denied previ-
13 ously by another judge designated under this subsection.
14 Each judge designated shall so serve for a period of seven
15 years and shall not be eligible for redesignation. If any judge
16 designated under this subsection denies an application for
17 an order authorizing electronic surveillance under this chap-
18 ter, such judge shall provide immediately for the record a
19 complete written statement of the reasons for his decision
20 and, on motion of the United States, direct that the record
21 be transmitted, under seal, to the special court of review
22 established in subsection (b).

23 “(b) The Chief Justice shall publicly designate three
24 judges, one of whom shall be publicly designated as the pre-
25 siding judge, from the United States district court or courts

1 of appeals who together shall comprise a special court of
2 review which shall have jurisdiction to review the denial
3 of any application made under this chapter. If such special
4 court determines that the application was properly denied,
5 the special court shall immediately provide for the record
6 a complete written statement of the reasons for its decision
7 and, on motion of the United States, direct that the record
8 be transmitted to the Supreme Court, which shall have juris-
9 diction to review such decision.

10 “(c) All proceedings under this chapter shall be con-
11 ducted as expeditiously as possible. The record of proceedings
12 under this chapter, including applications made and orders
13 granted, shall be sealed by the presiding judge and shall be
14 maintained under security measures established by the Chief
15 Justice in consultation with the Attorney General. The Chief
16 Justice, in consultation with the Attorney General, shall
17 establish rules establishing the procedure for selecting to
18 which judge designated under section 2523 (a) applications
19 under this chapter shall be submitted.

20 “§ 2524. Application for an order

21 “(a) Each application for an order approving electronic
22 surveillance under this chapter shall be made by a Federal
23 officer in writing upon oath or affirmation to a judge having
24 jurisdiction under section 2523 of this chapter. Each appli-
25 cation shall require the approval of the Attorney General

1 based upon his finding that it satisfies the criteria and re-
2 quirements of such application as set forth in this chapter. It
3 shall include the following information:

4 “(1) the identity of the Federal officer making the
5 application;

6 “(2) the authority conferred on the applicant by
7 the President of the United States and the approval of
8 the Attorney General to make the application;

9 “(3) the identity or a characterization of the per-
10 son who is the target of the electronic surveillance;

11 “(4) a statement of the facts and circumstances
12 relied upon by the applicant to justify his belief that—

13 “(i) the target of the electronic surveillance
14 is a foreign power or an agent of a foreign power
15 and

16 “(ii) the facilities or the place at which the
17 electronic surveillance is directed are being used,
18 or are about to be used, by a foreign power or an
19 agent of a foreign power;

20 “(5) a statement of the procedures to minimize the
21 acquisition, retention, and dissemination, and to require
22 the expunging, of information relating to permanent
23 resident aliens or citizens of the United States that does
24 not relate to the ability of the United States—

25 “(A) to protect itself against actual or poten-

1 tial attack or other grave hostile acts of a foreign
2 power or an agent of a foreign power;

3 “(B) to provide for the national defense or
4 the security of the Nation;

5 “(C) to provide for the conduct of the foreign
6 affairs of the United States;

7 “(D) to protect against the terrorist activities
8 of a foreign power or an agent of a foreign power;

9 “(E) to protect itself against the sabotage ac-
10 activities of a foreign power or an agent of a foreign
11 power; or

12 “(F) to protect itself against the clandestine
13 intelligence activities of an intelligence service or
14 network of a foreign power or an agent of a for-
15 eign power;

16 except, that appropriate steps shall be taken to
17 insure that information retained which relates solely
18 to the conduct of foreign affairs shall not be maintained
19 in such a manner as to permit the retrieval of such
20 information by reference to a citizen of the United
21 States who is a party to a communication intercepted
22 as provided in this chapter;

23 “(6) if the target of the electronic surveillance is
24 a foreign power which qualifies as such solely on the
25 basis that it is an entity controlled and directed by a

1 foreign government or governments, and unless there
 2 is probable cause to believe that a substantial number
 3 of the officers or executives of such entity are officers
 4 or employees of a foreign government, or agents of a
 5 foreign power as defined in section 2521 (2) (B), (C),
 6 (D), or (E), a statement of the procedures to prevent
 7 the acquisition, retention, and dissemination and to
 8 require the expunging of communications of perma-
 9 nent resident aliens and citizens of the United States
 10 who are not officers or executives of such entity respon-
 11 sible for those areas of its activities which involve foreign
 12 intelligence information.

13 “(7) a factual description of the nature of the in-
 14 formation sought;

15 “(8) a certification or certifications by the Assist-
 16 ant to the President for National Security Affairs or
 17 an executive branch official or officials designated by
 18 the President from among those executive officers em-
 19 ployed in the area of national security or defense and
 20 appointed by the President with the advice and consent
 21 of the Senate—

22 “(A) that the information sought is foreign
 23 intelligence information;

24 “(B) that the purpose of the surveillance is
 25 to obtain foreign intelligence information;

1 “(C) that such information cannot feasibly
2 be obtained by normal investigative techniques;

3 “(D) including a designation of the type of
4 foreign intelligence information being sought ac-
5 cording to the categories described in section 2521
6 (b) (5) ; and

7 “(E) including a statement of the basis for
8 the certification that—

9 “(i) the information sought is the type of
10 foreign intelligence information designated,
11 and

12 “(ii) such information cannot feasibly be
13 obtained by normal investigative techniques;

14 “(9) a statement of the means by which the sur-
15 veillance will be effected;

16 “(10) a statement of the facts concerning all previ-
17 ous applications that have been made to any judge under
18 this chapter involving any of the persons, facilities, or
19 places specified in the application, and the action taken
20 on each previous application; and

21 (11) a statement of the period of time for which
22 the electronic surveillance is required to be maintained.
23 If the nature of the intelligence gathering is such that
24 the approval of the use of electronic surveillance under
25 this chapter should not automatically terminate when

1 the described type of information has first been obtained,
2 a description of facts supporting the belief that additional
3 information of the same type will be obtained thereafter.

4 “(b) The Attorney General may require any other affi-
5 davit or certification from any other officer in connection with
6 the application.

7 “(c) The judge may require the applicant to furnish
8 such other information or evidence as may be necessary
9 to make the determinations required by section 2525 of this
10 chapter.

11 **“§ 2525. Issuance of an order**

12 “(a) Upon an application made pursuant to section
13 2524 of this title, the judge shall enter an ex parte order
14 as requested or as modified approving the electronic sur-
15 veillance if he finds that—

16 “(1) the President has authorized the Attorney
17 General to approve applications for electronic surveil-
18 lance for foreign intelligence information;

19 “(2) the application has been made by a Federal
20 officer and approved by the Attorney General;

21 “(3) on the basis of the facts submitted by the ap-
22 plicant there is probable cause to believe that:

23 “(i) the target of the electronic surveillance is
24 a foreign power or an agent of a foreign power; and

25 “(ii) the facilities or place at which the elec-

1 tronic surveillance is directed are being used, or are
2 about to be used, by a foreign power or an agent of
3 a foreign power;

4 “(4) minimization procedures to be followed are
5 reasonably designed to minimize the acquisition, reten-
6 tion, and dissemination, and to require the expunging,
7 of information relating to permanent resident aliens or
8 citizens of the United States that does not relate to
9 the ability of the United States—

10 “(A) to protect itself against actual or poten-
11 tial attack or other grave hostile acts of a foreign
12 power or an agent of a foreign power;

13 “(B) to provide for the national defense or
14 the security of the Nation;

15 “(C) to provide for the conduct of the for-
16 eign affairs of the United States;

17 “(D) to protect against the terrorist activ-
18 ities of a foreign power or an agent of a foreign
19 power;

20 “(E) to protect itself against the sabotage
21 activities of a foreign power or an agent of a for-
22 eign power; or

23 “(F) to protect itself against the clandestine
24 intelligence activities of an intelligence service or

1 network of a foreign power or an agent of a foreign
2 power;

3 except, that appropriate steps shall be taken to insure
4 that information retained which relates solely to the
5 conduct of foreign affairs shall not be maintained in
6 such a manner as to permit the retrieval of such infor-
7 mation by reference to a citizen of the United States
8 who is a party to a communication intercepted as pro-
9 vided in this chapter;

10 “(5) if the target of the electronic surveillance
11 is a foreign power which qualifies as such solely on the
12 basis that it is an entity controlled and directed by a
13 foreign government or governments, and unless there is
14 probable cause to believe that a substantial number of
15 the officers or executives of such entity are officers or
16 employees of a foreign government, or agents of a foreign
17 power as defined in section 2521 (2) (B), (C), (D),
18 or (E), procedures to be followed are reasonably de-
19 signed to prevent the acquisition, retention, and dissem-
20 ination, and to require the expunging of communica-
21 tions of permanent resident aliens and citizens of the
22 United States who are not officers or executives of such
23 entity responsible for those areas of its activities which
24 involve foreign intelligence information;

25 “(6) the application which has been filed contains

1 the description and certification or certifications, speci-
2 fied in section 2524 (a) (7) and (8) ;

3 “(7) certification has been made pursuant to section
4 2524 (a) (8) that the information sought is foreign intelli-
5 gence information, that the purpose of this surveillance is to
6 obtain such foreign intelligence information, and that such
7 information cannot feasibly be obtained by normal investi-
8 gative techniques.

9 “(b) An order approving an electronic surveillance
10 under this section shall—

11 “(1) specify—

12 “(i) the identity or a characterization of the
13 person who is the subject of the electronic surveil-
14 lance;

15 “(ii) the nature and location of the facilities or
16 the place at which the electronic surveillance will be
17 directed;

18 “(iii) the type of information sought to be
19 acquired;

20 “(iv) the means by which the electronic sur-
21veillance will be effected; and

22 “(v) the period of time during which the elec-
23tronic surveillance is approved; and

24 “(2) direct—

1 “(i) that the minimization procedures be fol-
2 lowed;

3 “(ii) that, upon the request of the applicant,
4 a specified communication or other common carrier,
5 landlord, custodian, contractor, or other specified
6 person furnish the applicant forthwith any and all
7 information, facilities, or technical assistance neces-
8 sary to accomplish the electronic surveillance in such
9 manner as will protect its secrecy and produce a
10 minimum of interference with the services that such
11 carrier, landlord, custodian, contractor, or other
12 person is providing that target of electronic surveil-
13 lance; and

14 “(iii) that the applicant compensate, at the
15 prevailing rates, such carrier, landlord, custodian,
16 or other person for furnishing such aid.

17 “(c) An order issued under this section may approve
18 an electronic surveillance for the period necessary to achieve
19 its purpose, or for ninety days, whichever is less. Extensions
20 of an order issued under this chapter may be granted upon
21 an application for an extension made in the same manner as
22 required for an original application and after new findings
23 required by subsection (a) of this section. In connection
24 with the new findings of probable cause, the judge may
25 require the applicant to submit information obtained pur-

1 suant to the original order or to any previous extensions,
2 or any other information or evidence as he finds necessary
3 to make such new findings. Each extension may be for the
4 period necessary to achieve the purposes for which it is
5 granted, or for ninety days, whichever is less.

6 “(d) Notwithstanding any other provision of this
7 chapter, when the Attorney General reasonably determines
8 that—

9 “(1) an emergency situation exists with respect
10 to the employment of electronic surveillance to obtain
11 foreign intelligence information before an order au-
12 thorizing such surveillance can with due diligence be
13 obtained, and

14 “(2) the factual basis for issuance of an order under
15 this chapter to approve such surveillance exists,
16 he may authorize the emergency employment of electronic
17 surveillance if a judge designated pursuant to section 2523
18 of this title is informed by the Attorney General or his desig-
19 nate at the time of such authorization that the decision has
20 been made to employ emergency electronic surveillance
21 and if an application in accordance with this chapter is made
22 to that judge as soon as practicable, but not more than
23 twenty-four hours after the Attorney General authorizes
24 such acquisition. If the Attorney General authorizes such
25 emergency employment of electronic surveillance, he shall

1 require that the minimization procedures required by this
2 chapter for the issuance of a judicial order be followed. In
3 the absence of a judicial order approving such electronic
4 surveillance, the surveillance shall terminate when the infor-
5 mation sought is obtained, when the application for the order
6 is denied, or after the expiration of twenty-four hours from
7 the time of authorization by the Attorney General, whichever
8 is earliest. In the event that such application for approval is
9 denied, or in any other case where the electronic surveillance
10 is terminated without an order having been issued, no infor-
11 mation obtained or evidence derived from such surveillance
12 shall be received in evidence or otherwise disclosed in any
13 trial, hearing or other proceeding in or before any court,
14 grand jury, department, office, agency, regulatory body,
15 legislative committee or other authority of the United States,
16 a State, or a political subdivision thereof. As provided in
17 section 2523, a denial of the application may be appealed
18 by the Attorney General.

19 “(c) A judge denying an order under this section or
20 a panel affirming such denial under section 2523 (b) shall
21 state the reasons therefor.

22 **“§ 2526. Use of information**

23 “(a) Information acquired from an electronic surveil-
24 lance conducted pursuant to this chapter may be used and

1 disclosed by Federal officers and employees only for pur-
2 poses relating to the ability of the United States—

3 “(1) to protect itself against actual or potential
4 attack or other grave hostile acts of a foreign power
5 or agent of a foreign power;

6 “(2) to provide for the national defense or the
7 security of the Nation;

8 “(3) to provide for the conduct of the foreign af-
9 fairs of the United States;

10 “(4) to protect against the terrorist activities of
11 a foreign power or agent of a foreign power;

12 “(5) to protect itself against the sabotage activities
13 of a foreign power or agent of a foreign power; or

14 “(6) to protect itself against the clandestine intel-
15 ligence activities of an intelligence service or network
16 of a foreign power or agent of a foreign power,

17 or for the enforcement of the criminal law. No otherwise
18 privileged communication obtained in accordance with, or
19 in violation of, the provisions of this chapter shall lose its
20 privileged character.

21 “(b) The minimization procedures required under this
22 chapter shall not preclude the retention and disclosure, for
23 law enforcement purposes, of any information which con-
24 stitutes evidence of a crime if such disclosure is accom-

1 panied by a statement that such evidence, or any informa-
2 tion derived therefrom, may only be used in a criminal
3 proceeding with the advance authorization of the Attorney
4 General.

5 “(c) No information obtained or derived from an elec-
6 tronic surveillance shall be received in evidence or otherwise
7 used or disclosed in any trial, hearing, or other proceeding
8 in a Federal or State court unless, prior to the trial, hear-
9 ing, or other proceeding or at a reasonable time prior to an
10 effort to disclose the information or submit it in evidence in
11 the trial, hearing, or other proceeding, the Government noti-
12 fies the court of the source of the information and the court
13 determines that the surveillance was authorized and con-
14 ducted in a manner that did not violate any right afforded
15 by the Constitution and statutes of the United States to the
16 person against whom the evidence is to be introduced. In
17 making such a determination, the court, after reviewing
18 a copy of the court order and accompanying application in
19 camera and ex parte shall order disclosed to the person
20 against whom the evidence is to be introduced the order
21 and application, or portions thereof, if it finds that there is
22 a reasonable question as to the legality of the surveillance
23 and that such disclosure would promote a more accurate
24 determination of such legality, or that such disclosure would
25 not harm the national security.

1 “(d) Any person who has been a subject of electronic
2 surveillance and against whom evidence derived from such
3 electronic surveillance is to be, or has been, introduced or
4 otherwise used or disclosed in any trial, hearing, or proceed-
5 ing in or before any court, department officer, agency, regu-
6 latory body, or other authority of the United States, a State,
7 or a political subdivision thereof, may move to suppress the
8 contents of any communication acquired by electronic surveil-
9 lance, or evidence derived therefrom, on the grounds that—

10 “(i) the communication was unlawfully intercepted;

11 “(ii) the order of authorization or approval under
12 which it was intercepted is insufficient on its face; or

13 “(iii) the interception was not made in conformity
14 with the order of authorization or approval.

15 Such motion shall be made before the trial, hearing, or pro-
16 ceeding unless there was no opportunity to make such mo-
17 tion or the person was not aware of the grounds of the motion.

18 If the motion is granted, the contents of the communica-
19 tion acquired by electronic surveillance or evidence derived
20 therefrom shall be suppressed. The judge, upon the filing
21 of such motion may in his discretion make available to the
22 person or his counsel for inspection such portions of the
23 intercepted communication or evidence derived therefrom
24 as the judge determines to be in the interests of justice.

25 “(e) If an emergency employment of the electronic

1 surveillance is authorized under section 2525 (d) and a sub-
2 sequent order approving the surveillance is not obtained,
3 the judge shall cause to be served on any United States
4 citizen or permanent resident alien named in the application
5 and on such other United States citizen or permanent resi-
6 dent alien subject to electronic surveillance as the judge may
7 determine in his discretion it is in the interest of justice to
8 serve, notice of—

9 “(1) the fact of the application;

10 “(2) the period of the surveillance; and

11 “(3) the fact that during the period foreign intel-
12 ligence information was or was not obtained.

13 On an ex parte showing of good cause to the judge the
14 serving of the notice required by this subsection may be
15 postponed or suspended for a period not to exceed ninety
16 days. Thereafter, on a further ex parte showing of good
17 cause, the court shall forgo ordering the serving of the notice
18 required under this subsection.

19 **“§ 2527. Report of electronic surveillance**

20 “(a) In April of each year, the Attorney General shall
21 report to the Administrative Office of the United States
22 Courts and shall transmit to the Congress with respect to the
23 preceding calendar year—

24 “(1) the number of applications made for orders
25 and extensions of orders approving electronic surveil-

1 lance and the number of such orders and extensions
2 granted, modified, and denied;

3 “(2) the periods of time for which applications
4 granted authorized electronic surveillances and the actual
5 duration of such electronic surveillances;

6 “(3) the number of such surveillances in place at
7 any time during the preceding year; and

8 “(4) the number of such surveillances terminated
9 during the preceding year.

10 “(b) Nothing in this chapter shall be deemed to limit
11 the authority of the Select Committee on Intelligence of
12 the United States Senate to obtain such information as it
13 may need to carry out its duties pursuant to S. Res. 400,
14 Ninety-fourth Congress, agreed to May 19, 1976.

15 SEC. 3. Chapter 119 of title 18, United States Code, is
16 amended as follows:

17 (a) Section 2511 (1) is amended—

18 (1) by inserting “or chapter 120 or as otherwise
19 authorized by a search warrant or order of a court of
20 competent jurisdiction,” immediately after “chapter” in
21 the first sentence;

22 (2) by inserting a comma and “or, under color of
23 law, willfully engages in any other form of electronic
24 surveillance as defined in chapter 120” immediately
25 before the semicolon in paragraph (a);

1 (3) by inserting "or information obtained under
2 color of law by any other form of electronic surveil-
3 lance as defined in chapter 120" immediately after
4 "contents of any wire or oral communication" in para-
5 graph (c) ;

6 (4) by inserting "or any other form of electronic
7 surveillance, as defined in chapter 120," immediately
8 before "in violation" in paragraph (c) ;

9 (5) by inserting "or information obtained under
10 color of law by any other form of electronic surveil-
11 lance as defined in chapter 120" immediately after
12 "any wire or oral communication" in paragraph (d) ;
13 and

14 (6) by inserting "or any other form of electronic
15 surveillance, as defined in chapter 120," immediately
16 before "in violation" in paragraph (d) .

17 "(b) (1) Section 2511 (2) (a) (i) is amended by in-
18 serting the words 'or radio communication' after the words
19 'wire communication' and by inserting the words 'or other-
20 wise acquire' after the word 'intercept.'

21 "(2) Section 2511 (2) (a) (ii) is amended by inserting
22 the words 'or chapter 120' after the second appearance of
23 the word 'chapter,' and by striking the period at the end
24 thereof and adding the following: 'or engage in electronic
25 surveillance, as defined in chapter 120: *Provided, however,*

1 That before the information, facilities, or technical assist-
2 ance may be provided, the investigative or law enforcement
3 officer shall furnish to the officer, employee, or agency of
4 the carrier either—

5 ““(1) an order signed by the authorizing judge cer-
6 tifying that a court order directing such assistance has
7 been issued, or

8 ““(2) in the case of an emergency surveillance as
9 provided for in section 2518 (7) of this chapter or sec-
10 tion 2525 (d) of chapter 120, or a surveillance con-
11 ducted under the provisions of section 2528 of chapter
12 120, a sworn statement by the investigative or law
13 enforcement officer certifying that the applicable stat-
14 utory requirements have been met,

15 and setting forth the period of time for which the surveil-
16 lance is authorized and describing the facilities from which
17 the communication is to be intercepted. No communication
18 common carrier nor any officer, employee, or agent thereof,
19 may furnish any information, facilities, or technical assist-
20 ance necessary to intercept a wire or oral communication
21 or engage in electronic surveillance, except in accordance
22 with the provisions of chapter 120 or this chapter; and said
23 carriers, officers, employees, and agents shall promptly report
24 in writing to the Attorney General any request to furnish any
25 information, facilities, or technical assistance which is unac-

1 complicated by a court order, or in the case of an emergency
2 application, a sworn statement by the investigative or law
3 enforcement officer certifying that the applicable statutory
4 requirements have been met. Any violation of this subsec-
5 tion by a communication common carrier or an officer, em-
6 ployee, or agency thereof, shall render the carrier liable for
7 the civil damages provided for in section 2520.' ”.

8 “(c) (1) Section 2511 (2) (b) is amended by inserting
9 the words ‘or otherwise engage in electronic surveillance, as
10 defined in chapter 120,’ after the word ‘radio’.

11 “(2) Section 2511 (2) (c) is amended by inserting the
12 words ‘or engage in electronic surveillance, as defined in
13 chapter 120,’ after the words ‘oral communication’ and by
14 inserting the words ‘or such surveillance’ after the last word
15 in the paragraph and before the period.

16 “(3) Section 2511 (6) is amended by adding at the end
17 of the section the following provision:

18 “(c) It shall not be unlawful under this chapter
19 or chapter 120, or section 605 of the Commissions Act
20 of 1934 for an officer, employee, or agent of the United
21 States in the normal course of his official duty, to con-
22 duct electronic surveillance as defined in section 2521
23 (b) (2) of chapter 120, for the sole purpose of deter-
24 mining the capability of equipment used to obtain
25 foreign intelligence or the existence or capability of

1 equipment used by a foreign power or its agents: *Pro-*
2 *vided*, (1) That the test period shall be limited in
3 extent and duration to that necessary to determine
4 the capability of the equipment, and (2) that the con-
5 tent of any communication acquired under this section
6 shall be retained and used only for the purpose of deter-
7 mining the existence or capability of such equipment,
8 shall be disclosed only to the officers conducting the test,
9 and shall be destroyed upon completion of the testing;
10 and (3) that the test may exceed ninety days only with
11 the prior approval of the Attorney General.’ ”

12 (d) Section 2511 (3) is repealed.

13 “(e) Section 2515 is amended by inserting the words
14 ‘or electronic surveillance as defined in chapter 120, has
15 been made’ after the word ‘intercepted’ and by inserting the
16 words ‘or other information obtained from electronic sur-
17 veillance, as defined in chapter 120,’ after the second ap-
18 pearance of the word ‘communication’.”

19 (f) Section 2518 (1) is amended by inserting the words
20 “under this chapter” after the word “communication”.

21 (g) Section 2518 (4) is amended by inserting the words
22 “under this chapter” after both appearances of the words
23 “wire or oral communication”.

24 (h) Section 2518 (9) is amended by striking the word

1 “intercepted” and inserting the words “intercepted pursuant
2 to this chapter” after the word “communication”.

3 (i) Section 2518 (10) is amended by striking the word
4 “intercepted” and inserting the words “intercepted pursuant
5 to this chapter” after the first appearance of the word
6 “communication”.

7 (j) Section 2519 (3) is amended by inserting the words
8 “pursuant to this chapter” after the words “wire or oral
9 communications” and after the words “granted or denied”.

10 “(k) Section 2520 is amended by deleting all before
11 subsection (2) and inserting in lieu thereof ‘any person
12 other than an agent of a foreign power as defined in section
13 2521 (b) (2) (A) of chapter 120, who has been subject to
14 electronic surveillance, as defined in chapter 120, or whose
15 wire or oral communication has been intercepted, or about
16 whom information has been disclosed or used, in violation
17 of this chapter, shall (1) have a civil cause of action against
18 any person who so acted in violation of this chapter and’.”

19 SEC. 4. The provisions of this Act and the amendment
20 made hereby shall become effective upon enactment: *Pro-*
21 *vided*, That, any electronic surveillance approved by the
22 Attorney General to gather foreign intelligence information
23 shall not be deemed unlawful for failure to follow the proce-
24 dures of chapter 120, title 18, United States Code, if that

1 surveillance is terminated or an order approving that surveil-
2 lance is obtained under this chapter within sixty days
3 following the designation of the first judge pursuant to
4 section 2523 of chapter 120, title 18, United States Code.

95TH CONGRESS
1ST SESSION

H. R. 5794

A BILL

To amend title 18, United States Code, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information.

By Mr. RAILSBACK

MARCH 30, 1977

Referred to the Committee on the Judiciary